



Citation: *SS v Minister of Employment and Social Development and PS*, 2022 SST 1210

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. S.

Respondent: Minister of Employment and Social Development

Added Party: P. S.

Decision under appeal: General Division decision dated July 11, 2022
(GP-20-1825)

Tribunal member: Neil Nawaz

Decision date: October 31, 2022

File number: AD-22-738

Decision

[1] Permission to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Applicant is a 77-year-old Old Age Security (OAS) pensioner who receives the Guaranteed Income Supplement (GIS). He has been married to the Added Party since 1975. She is also an OAS and GIS recipient.

[3] The Applicant's GIS had been calculated at the married rate. In March 2017, the Canada Revenue Agency (CRA) reassessed the Added Party's income for 2014. That meant that her income for the year was suddenly higher than what Service Canada had previously used to determine the Applicant's GIS eligibility.¹ As a result, Service Canada decided that the Applicant was no longer entitled to the GIS from July 2015 to June 2016. It demanded that the Applicant repay the \$4,230 that he had received during the payment period.

[4] The Applicant then contacted Service Canada. He said that he and his wife were no longer together. He wanted his GIS to be calculated at the single rate. He signed a statutory declaration saying that he and the Added Party had been living separate and apart since September 1, 2015.² The Added Party signed a similar statutory declaration in February 2020.³

[5] Service Canada refused to change its position. The Applicant appealed the refusal to Social Security Tribunal. He insisted that he and the Added Party lived separate lives, although they continued to live at the same address. Among other things, he noted that he and his wife had reported their marital status as separated on their respective income tax returns.

¹ Service Canada is an agency of the Minister of Employment and Social Development.

² See Applicant's statutory declaration – separation of legal spouses or common-law partners dated December 11, 2017, GD2-5.

³ See Added Party's statutory declaration – separation of legal spouses or common-law partners dated February 27, 2020, GD5-3.

[6] The Tribunal's General Division held a series of hearings by teleconference and dismissed the appeal. It said that Service Canada was right to continue calculating the Applicant's GIS at the married rate. It found that the Applicant had not proved that he and the Added Party had been separated since September 1, 2015, or for any continuous period of at least three months since that date. The General Division also found that, although the Applicant and the Added Party no longer had a sexual relationship, that factor was outweighed by the fact that they remained married and had not taken any steps to unwind their finances.

[7] The Applicant is now asking for permission to appeal the General Division's decision. He alleges that the General Division made the following errors:

- It failed to consider income tax returns showing that his marital status was listed as "separated";
- It didn't notice that he had removed his wife from his automobile insurance policy;
- It incorrectly found that he received provincial benefits as a married person; and
- It made his wife a party to the appeal, thus confusing the situation and making his position harder to defend without legal representation.

[8] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant would not have a reasonable chance of success on appeal.

Issue

[9] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or

- based its decision on an important error of fact.⁴

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.⁵ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁶ This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.⁷

[10] In this appeal, I had to decide whether the Applicant had an arguable case.

Analysis

[11] The Applicant comes to the Appeal Division repeating some of the same arguments that he made at the General Division. He maintains that, even though he and his wife share the same address, they have been effectively separated since September 2015. He insists that, while they retain a degree of financial interdependence, they do so only out of expedience.

[12] I don't see a case for these arguments.

[13] To succeed at the Appeal Division, an applicant must do more than simply re-argue their case. An applicant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

[14] In this case, I don't see any indication that the General Division committed errors in arriving at its decision. The General Division reviewed the available evidence and made the following findings:

- Whether the Applicant and the Added Party are cohabiting in a conjugal relationship depends on many factors, not just their living and sleeping arrangements;

⁴ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

⁵ See DESDA, sections 56(1) and 58(3).

⁶ See DESDA, section 58(2).

⁷ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

- Although the Applicant and the Added party have separate living quarters at the same property, their lives remained intertwined, for instance:
 - They share or split household expenses, such as property taxes, utility bills, and yard maintenance;
 - They don't do a formal accounting of their respective expenses, but have settled on an accommodation that each thinks is fair; and
 - The Added Party occasionally prepares meals for the Applicant;
- Neither the Applicant or the Added Party have ever taken steps to divide their assets;
- Neither the Applicant or the Added Party ever advised CRA or Service Canada that they had separated until it became advantageous for them to do so; and
- The Applicant and the Added Party's respective statutory declarations carry little weight because they are inconsistent with the rest of the available evidence.

[15] One of the General Division's jobs is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the evidence.⁸ I see no reason to second-guess the General Division's conclusion, which it reached after what strikes me as a careful assessment of the evidence and applicable law.

[16] I will now briefly address some of the Applicant's specific allegations:

- **There is no arguable case that the General Division disregarded the Applicant's tax returns**

[17] The Applicant alleges that the General Division ignored the fact that his income tax returns list his marital status as "separated."

⁸ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[18] I don't see a case here. The General Division was well aware of the Applicant's tax disclosures and devoted a section to them in its decision. The General Division noted that the Applicant at first said that he was married in his returns for 2015, 2016, and 2017 but later refiled them stating that he was separated. However, the General Division was not inclined to give these revisions much weight because they were not made until 2019—after the Applicant realized that his marital status had financial implications.

[19] I see no reason to interfere with the General Division's findings on this subject.

– **There is no arguable case that the General Division ignored the change in the Applicant's auto insurance**

[20] This is a similar story to the Applicant's income tax returns. For years, the Applicant listed his wife on his automobile insurance policy as his spouse. The General Division heard the Applicant's explanation that the listing was only because they lived at the same address and had access to each other's keys. However, the General Division still regarded the policy as evidence that they were, more likely than not, in a marriage-like relationship.⁹

[21] The Applicant says that the General Division ignored a letter on file confirming that the policy was cancelled in July 2020.¹⁰

[22] Again, I don't see a case that the General Division erred here. As finder of fact, the General Division is presumed to have considered all the material before it and does not have to refer to each and every item of evidence in its decision.¹¹ The General Division may not have mentioned the policy cancellation in its decision, but then again, it had good reason not to. The fact remained that, for years the Applicant voluntarily assumed the risk of the Added Party—a person from whom he was supposedly

⁹ See General Division decision, paragraph 66.

¹⁰ See letter dated July 5, 2020 from The Personal Insurance Company to the Applicant and Added Party confirming their request to cancel their policy, GD1-60.

¹¹ See *Simpson*, note 8.

separated. The General Division quite reasonably took this as one more piece of evidence pointing to a continuing relationship between husband and wife.

– **There is no arguable case that the General Division ignored the Applicant’s marital status when he was approved for provincial benefits**

[23] The Applicant alleges that the General Division disregarded the fact that he started receiving the Alberta Seniors Benefit (ASB) based on his status as a single person.

[24] I don’t see an arguable case on this point. As indicated in its decision, the General Division well aware of the Applicant’s ASB and how he qualified for it.¹² However, the General Division noted that the Alberta government’s designation of the Applicant as a single person was based on the Applicant’s self-reported change in his marital status to the CRA in 2019. The General Division explained that it chose not to place much weight on what the Applicant said about his marital status after March 2017, because that was the date when the Applicant became aware of the financial implications associated with it.

[25] In the absence of any significant factual error, the General Division was within its authority to discount the Applicant’s own after-the-fact disclosure of his “separated” status to other benefits-granting institutions.

– **There is no arguable case that the General Division erred by making his wife a party to the appeal**

[26] The Applicant criticizes the General Division for assessing the Added Party’s marital status as well as his own.

[27] I don’t see a case for this criticism. According to section 10 of the *Social Security Tribunal Regulations*, the Tribunal may, “of its own initiative,” add **any** person as a party if the person has a “direct interest.” On the face of it, this provision gives the Tribunal fairly wide latitude to add parties as it sees fit. Although the General Division did not

¹² In its decision, the General Division cited a letter from Alberta Seniors and Housing dated August 20, 2019, GD1-38.

spell out its reasons for including the Applicant's wife in the proceedings, it is obvious that the Applicant's marital status has a direct bearing on hers. As we have seen, whether a person is separated or married affects the GIS amount to which they are entitled. For that reason, it is obvious that the Added Party would have had a "direct interest" in the outcome of the Applicant's appeal.

Conclusion

[28] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[29] Permission to appeal is refused.



Member, Appeal Division